XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(12)

मामला क्रमांक Cr.A. 3209/99 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 3209 OF 1999

DIVISION BENCH **HON'BLE SHRI L.C. BHADOO, &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

APPELLANT : Peshiram, S/o Mukundsingh Gond, Aged 35 years, R/o Village Ranjna, P.S. Pali, District Bilaspur (M.P.)

Versus

RESPONDENT : State of Madhya Pradesh, Through Police Station - Pali, District Bilaspur.

Present

Mr. Dashrath Gupta, counsel for the accused/appellant.
Mr. D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

ORAL JUDGMENT
(18th June 2007)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 3rd August 1999 passed by learned Sessions Judge, Bilaspur in S.T.No.321/98 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC, for committing the murder of his wife Shukwara Bai, sentenced him to undergo imprisonment for life

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and to pay a fine of Rs.3,000/-, in default of payment of fine to further undergo R.I. for one year.

2. Case of the prosecution, in brief, is that PW-1 Firturam lodged a report (Ex.P/1) in the Police Station Pali to the effect that yesterday evening at about 6.00 p.m. he was at his residence, at that time Shukwara Bai, wife of Peshiram raised cries saying that she has been attacked, hearing the screams he went there running and saw that accused Peshiram had ran away leaving spade. On enquiry Shukwara Bai informed that her husband has attacked her with spade causing grievous injuries on her head and temporal region, as a result of which she was lying on the cot drenched with blood. The villagers came and when they were taking her to the hospital at about 11.00 p.m. in the night she succumbed to the injuries. Receiving this report S.H.O., P.S. Pali, registered the crime under Section 302 of the IPC and left for the scene of occurrence. The accused, while in police custody gave memorandum (Ex.P/2), in pursuance of that the weapon of offence spade was seized under Ex.P/3. One half *sando baniyan* of the accused was taken into possession under Ex.P/4. Plain and bloodstained soil was taken into possession from the place of occurrence under Ex.P/5. Inquest (Ex.P/7) on the body of Shukwara Bai was prepared by the investigating officer after giving notice (Ex.P/8) to the Panchas. Dead body of Shukwara Bai was sent for postmortem examination to Primary Health Center, Pali under Ex.P/9 where Dr. Pradeep Agrawal conducted postmortem and prepared the postmortem report Ex.P/15. He opined that cause of death is shock, as a result of assault over face and head and the death was homicidal

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

in nature. Site plan Ex.P/11 was prepared. The seized articles were sent for chemical examination to F.S.L. Sagar under Ex.P/12 from where report Ex.P/13 was received.

3. After completion of investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Katghora who in turn committed the case to the Court of Sessions Judge, Bilaspur where prosecution in order to establish the charge against the accused examined 7 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he stated that on account of the fact that his mind was disturbed, he attacked his wife with spade and committed the murder.

4. Learned Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned.

5. We have heard Mr. Dashrath Gupta, counsel appearing on behalf of the accused/appellant and Mr. D.K.Gwalre, Additional Public Prosecutor for the State/respondent.

6. Mr. Gupta, has not disputed the homicidal death of Shukwara Bai. Moreover, Dr. Pradeep Agrawal (PW-7), has stated that he conducted postmortem on the body of deceased Shukwara Bai on 7th May 1998 and found the following injuries:-

On external examination

(i) lacerated wound over right mala prominence just lateral to the eye ball, vertically placed 4 c.m. x 1.5

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

c.m. x bone deep, underlying tissues were ecymosed, fracture of maxilla and zyagomatic processes were there;

(ii) lacerated wound on tempero-parietal region right side of the scalp, parallel with coronal suture, 5 c.m. x 1 c.m. x bone deep, underlying subcutaneous haemotoma more on the left tempero-parietal region and left occipital region of the scalp was present, linear fracture 15 c.m. in length parallel to coronal suture 4 c.m. on the left side and 11 c.m. on the right side of the mid line;

On internal examination

1. Fracture of both parietal bones, parallel to the coronal suture, 15 c.m. in length.
2. Meninges was congested. Sub dural haemotoma was present.
3. Subcutaneous echymosis was present on the upper part of the chest.
4. Pericardium was echymosis.
5. Brain was congested. Lungs were pale, respiratory cord and spleen were healthy.

The injuries mentioned above were over face and head were caused by hard and blunt object. In his opinion the cause of death was shock as a result of assault over face and head, death occurred within 12 hours to 24 hours prior to the date and time of performance of post mortem and it was homicidal in nature. Therefore, in view of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~the above medical evidence, it is established that death of Shukwara~~ Bai was homicidal in nature.

7. As far as involvement of the accused/appellant in crime in question is concerned, conviction of the accused/appellant rests on the oral dying declaration made by deceased Shukwara Bai before PW-1 Firturam, who has stated that at the relevant time he was at his residence and at the time of incident accused, his wife and a four years old child were present at the house of the accused. He heard the screams of Shukwara Bai, therefore, he rushed towards the house of the accused and saw that Shukwara Bai was lying on a cot in an injured condition, there were injuries over her head and blood was oozing out of the injury. He enquired from Shukwara Bai, on which she replied that her husband Peshiram has attacked her with spade. Thereafter, he called the Sarpanch and the Kotwar of the village. In the cross-examination of this witness, the defence has not been able to brought on record any circumstance which discredits the evidence of this witness. Moreover, his presence on the scene of occurrence is established by the fact that PW-3 Laxminarayan has stated that on the fateful day after the incident Firturam called him and other villagers, when they reached on the spot, they saw that Shukwara Bai was lying on a cot. Similar is the evidence of PW-4 Manindra Kumar Sahu, who has also stated that Firturam informed him about the incident. Therefore, in view of the above evidence, presence of Firturam (PW-1) at the place of occurrence is established, who has stated that deceased Shukwara Bai made oral dying declaration before him to the effect that her husband has attacked her with spade. Consequently, the oral

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~dying declaration made by Shukwara Bai before PW-1 Firturam~~ also stands established. Moreover, the accused himself in his statement under Section 313 of the Cr.P.C. has stated that he attacked his wife with spade as his mind was disturbed, but nothing has been brought on record by the defence to show that at the time of incident the accused was suffering from unsoundness of mind or he was disturbed in any manner. The defence has also not been able to prove this point by cross-examining the prosecution witnesses or the investigating officer. Therefore, involvement of the accused in the crime in question is established and to that effect, we do not find any illegality or infirmity in the impugned judgment of the trial Court.

8. Learned counsel for the appellant argued that in view of the statement of accused that he attacked his wife Shukwara Bai as his mind was disturbed and the fact that there is nothing on record to show that accused attacked the deceased with an intention to cause her death, the offence against the accused/appellant does not travel beyond Section 304-II of the IPC.

9. On the other hand, learned counsel for the State supported judgment of the trial Court.

10. In order to appreciate the argument advanced by learned counsel for the accused/appellant we have scrutinized the evidence of Dr. Pradeep Agrawal (PW-7), who has stated that there were two lacerated wounds on the face and head of the deceased, skull bone and parietal bone were fractured. He has further stated that death

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was homicidal in nature, injuries over head and face were sufficient in the ordinary course of nature to cause death and the head injury itself was sufficient in the ordinary course of nature to cause death. Therefore, looking to the nature of weapon used, the injuries sustained by the deceased, which according to medical evidence were sufficient in the ordinary course of nature to cause death and the part of body where the injuries were inflicted, it is established that the accused attacked the deceased with an intention to cause her death. Moreover, in the cross-examination of the prosecution witnesses or the investigating officer nothing has come on record to suggest that the attack made by the accused was not intentional.

11. For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court. The appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Khan

GRPRJ — FS/246— 2/2007 — 50,000.